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capacity as Attorney General for the State of Hawai'i

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

NATIONAL ASSOCIATION FOR
GUN RIGHTS; RONDELLE AYAU;
JEFFREY BRYANT,

Plaintiffs,

v.

ANNE E. LOPEZ, in her official
capacity as Attorney General for the
State of Hawai'i,

Defendant.

Civil No. 1:22-cv-404-DKW-RT

**DEFENDANT'S SUBMISSION
REGARDING PENDING
FEDERAL CASES
CHALLENGING LAWS
RESTRICTING ASSAULT
WEAPONS AND LARGE-
CAPACITY MAGAZINES UNDER
THE SECOND AMENDMENT**

District Judge:
Chief Judge Derrick K. Watson

Magistrate Judge:
Rom Trader

Pursuant to the Court’s direction at the April 7, 2023 preliminary injunction hearing, Defendant ANNE E. LOPEZ, in her official capacity as Attorney General for the State of Hawai‘i, respectfully submits the following report regarding the status of pending federal court cases challenging laws restricting assault weapons and large-capacity magazines under the Second Amendment. Unless otherwise specified, the challenged large-capacity magazine laws restrict magazines of over 10 rounds of ammunition.

I. Ninth Circuit

A. Hawai‘i

1. *Abbott v. Lopez*, 1:20-cv-00360 (D. Haw.) (Second Amendment challenge to Hawaii’s law restricting large-capacity magazines)
 - a. Discovery ongoing with current deadline of August 28, 2023.
 - b. Dispositive motions due August 28, 2023. Non-jury trial set to commence on January 23, 2024.
2. *National Ass’n for Gun Rights v. Lopez*, 1:22-cv-00404 (D. Haw.) (instant action)

B. California

1. *Wiese v. Bonta*, 2:17-cv-00903 (E.D. Cal.) (Second Amendment, Takings Clause, due process, and equal protection challenge to California’s law restricting large-capacity magazines)
 - a. Plaintiffs’ motion for summary judgment filed on March 31, 2023.

- b. Defendants' opposition and counter-motion due May 1, 2023.
 - c. Motion hearing set for July 10, 2023.
- 2. *Duncan v. Bonta*, 3:17-cv-01017 (S.D. Cal.) (Second Amendment, Takings Clause, and due process challenge to California's law restricting large-capacity magazines)
 - a. Court-ordered post-*Bruen* supplemental briefing has been completed as of February 21, 2023. The parties are awaiting further order of the court. No motion pending.
 - b. Prior district court judgment was summary judgment for plaintiffs. 366 F. Supp. 3d 1131 (S.D. Cal. 2019). En banc Ninth Circuit reversed. 19 F.4th 1087 (9th Cir. 2021). Supreme Court GVR'd in light of *Bruen*, 142 S. Ct. 2895 (2022). En banc Ninth Circuit vacated and remanded for further proceedings consistent with *Bruen*. 49 F.4th 1228 (9th Cir. 2022).
- 3. *Rupp v. Bonta*, 8:17-cv-00746 (C.D. Cal.) (Second Amendment challenge to California's law restricting assault weapons)
 - a. Motions for summary judgment or other dispositive motions due May 26, 2023.
 - b. Prior district court judgment was summary judgment for defendants. 401 F. Supp. 3d 978 (C.D. Cal. 2019). Ninth Circuit vacated and remanded for further proceedings consistent with *Bruen*. 2022 WL 2382319 (9th Cir. June 28, 2022).
- 4. *Miller v. Bonta*, 3:19-cv-01537 (S.D. Cal.) (Second Amendment challenge to California's law restricting assault weapons)
 - a. Court-ordered post-*Bruen* supplemental briefing has been completed as of February 21, 2023. The parties are awaiting further order of the court. No motion pending.

- b. Prior district court judgment for plaintiffs was entered after trial. 542 F. Supp. 3d 1009 (S.D. Cal. 2021). Ninth Circuit stayed judgment. 2021 WL 2659807 (9th Cir. June 21, 2021). Ninth Circuit vacated and remanded for further proceedings consistent with *Bruen*. 2021 WL 3095986 (9th Cir. Aug. 1, 2022).

C. Oregon

- 1. *Oregon Firearms Federation, Inc. v. Kotek*, 2:22-cv-01815 (D. Or.) (consolidated) (Second Amendment, Takings Clause, and due process challenge to Oregon's law restricting large-capacity magazines)
 - a. Plaintiffs' motion for temporary restraining order denied. 2022 WL 17454829 (D. Or. Dec. 6, 2022).
 - b. TRO motions also denied in now-consolidated actions challenging same Oregon law:
 - i. *Fitz v. Rosenblum*, 3:22-cv-01859, ECF 26 (D. Or. Dec. 6, 2022)
 - ii. *Eyre v. Rosenblum*, 3:22-cv-01862, ECF 27 (D. Or. Dec. 7, 2022).
 - c. Trial is scheduled to begin June 5, 2023.

D. Washington

- 1. *Brumback v. Ferguson*, 1:22-cv-03093 (E.D. Wash.) (Second Amendment challenge to Washington's law restricting large-capacity magazines)
 - a. Plaintiffs' motion for preliminary injunction pending. Oral argument held November 23, 2022.
- 2. *Sullivan v. Ferguson*, 3:22-cv-05403 (W.D. Wash.) (Second Amendment challenge to Washington's law restricting large-capacity magazines)

- a. Discovery ongoing with current completion date of July 10, 2023.
- b. Dispositive motions due August 7, 2023. Eight-day bench trial scheduled for December 4, 2023.

II. First Circuit

A. Massachusetts

1. *National Ass’n for Gun Rights v. Campbell*, 1:22-cv-11431 (D. Mass.) (Second Amendment challenge to Massachusetts’s law restricting assault weapons and large-capacity magazines)
 - a. Plaintiffs’ motion for preliminary injunction pending. Motion hearing set for May 11, 2023.

B. Rhode Island

1. *Ocean State Tactical, LLC v. Rhode Island*, 1:22-cv-00246 (D.R.I.) (Second Amendment challenge to Rhode Island’s law restricting large-capacity magazines)
 - a. District court denied plaintiffs’ preliminary injunction motion on December 14, 2022. 2022 WL 17721175. Plaintiffs appealed to the First Circuit.
 - b. Action stayed pending appeal pursuant to joint request of parties.
2. *Ocean State Tactical, LLC v. Rhode Island*, 23-1072 (1st Cir.) (plaintiffs’ appeal from denial of preliminary injunction motion in 1:22-cv-00246 (D.R.I.))
 - a. Appeal docketed January 18, 2023.
 - b. Plaintiffs-appellants’ opening brief submitted April 10, 2023. Defendants-appellees’ brief currently due May 10, 2023. Reply brief currently due May 31, 2023.

III. Second Circuit

A. Connecticut

1. *National Ass’n for Gun Rights v. Lamont*, 3:22-cv-01118 (D. Conn.) (Second Amendment challenge to Connecticut’s law restricting assault weapons and large-capacity magazines)
 - a. Plaintiffs’ preliminary injunction motion pending. Oral argument set for May 9, 2023.
2. *Grant v. Lamont*, 3:22-cv-01223 (D. Conn.) (Second Amendment challenge to Connecticut’s law restricting assault weapons)
 - a. Defendants’ motion to dismiss as to certain defendants on non-Second Amendment grounds pending.
 - b. Plaintiffs’ motion for temporary restraining order fully briefed on jurisdictional issues as of March 17, 2023.
 - c. Plaintiffs’ preliminary injunction motion on facial Second Amendment challenge filed February 3, 2023. Further briefing due after ruling on jurisdictional issues of TRO.

B. New York

1. *Lewis v. James*, 1:22-cv-00532 (W.D.N.Y.) (Second Amendment challenge to New York’s law restricting assault weapons)
 - a. On March 16, 2023, district court ordered plaintiffs to file an affidavit by April 17, 2023 to explain why the case should not be dismissed for failure to prosecute.
2. *Lu v. Rocah*, 7:22-cv-09715 (S.D.N.Y.) (Second Amendment and due process challenge to New York’s law restricting assault weapons and large-capacity magazines)

- a. Plaintiff filed motion for order to show cause and petition for writ of habeas corpus on March 31, 2023. District court denied without prejudice on April 5, 2023.
3. *Lane v. James*, 7:22-cv-10989 (S.D.N.Y.) (Second Amendment challenge to New York's law restricting assault weapons)
 - a. Briefing on defendants' motion to dismiss in process.
 - i. Defendants' motions due May 4, 2023. Plaintiffs' response due June 5, 2023. Defendants' replies due June 19, 2023.
 - b. Stipulation of voluntary dismissal as against New York Attorney General James filed on April 14, 2023.
4. *Harvey v. Katz*, 1:23-cv-00393 (E.D.N.Y.) (Second Amendment challenge to New York's law restricting assault weapons)
 - a. Action voluntarily dismissed as against New York Attorney General James on April 4, 2023.
 - b. Briefing on defendant's motion to dismiss in process.
 - i. Defendant's motion due May 12, 2023. Plaintiff's response due June 2, 2023. Defendant's reply due June 13, 2023

IV. Third Circuit

A. Delaware

1. *Delaware State Sportsmen's Ass'n v. Delaware Department of Safety & Homeland Security*, 1:22-cv-00951 (D. Del.) (consolidated) (Second Amendment challenge to Delaware's law restricting assault weapons and large-capacity magazines of over 17 rounds of ammunition)
 - a. Consolidated with *Graham v. Jennings*, 1:23-cv-00033, and *Gray v. Jennings*, 1:22-cv-01500.

- b. District court denied plaintiffs' preliminary injunction motion on March 27, 2023. 2023 WL 2655150. Plaintiffs appealed to the Third Circuit.
 - c. Action stayed pending appeal, pursuant to stipulation of the parties.
2. *Delaware State Sportsmen's Ass'n v. Delaware Department of Safety & Homeland Security*, 23-1633, 23-1634, 23-1641 (3d Cir.) (consolidated) (plaintiffs' appeals from denial of preliminary injunction motion in 1:22-cv-00951 (D. Del.) (consolidated))
- a. Appeals docketed on April 7, 2023.

B. New Jersey

1. *Ass'n of New Jersey Rifle & Pistol Clubs v. Platkin*, 3:18-cv-10507 (D.N.J.) (*ANJRPC*) (Second Amendment and Takings Clause challenge to New Jersey law restricting large-capacity magazines)
- a. Consolidated for coordination of discovery with:
 - i. *Cheeseman v. Platkin*, 1:22-cv-04360 (D.N.J.) (Second Amendment challenge to New Jersey law restricting assault weapons); and
 - ii. *Ellman v. Platkin*, 3:22-cv-04397 (D.N.J.) (Second Amendment challenge to New Jersey law restricting assault weapons).
 - b. Coordinated discovery ongoing with May 31, 2023 end date for fact discovery and August 31, 2023 end date for expert discovery.
 - c. Summary judgment or other dispositive motions in *ANJRPC*, *Cheeseman*, and *Ellman* due September 22, 2023.
 - d. Prior district court judgment in *ANJRPC* was summary judgment for defendants. 2019 WL 3430101 (D.N.J. July

29, 2019). Third Circuit affirmed. 974 F.3d 237 (3d Cir. 2020). Supreme Court GVR'd in light of *Bruen*, 142 S. Ct. 2894 (2022). On August 25, 2022, the Third Circuit remanded to the district court for further proceedings and record development under the standard articulated in *Bruen*.

V. Fourth Circuit

A. Maryland

1. *Bianchi v. Frosh*, 21-1255 (4th Cir.) (Second Amendment challenge to Maryland's law restricting assault weapons)
 - a. Fourth Circuit oral argument held on December 6, 2022. Awaiting decision.
 - b. Prior district court judgment was dismissal for failure to state a claim. Fourth Circuit affirmed. 858 F. App'x 645 (4th Cir. 2021). Supreme Court GVR'd in light of *Bruen*, 142 S. Ct. 2898 (2022).

VI. Seventh Circuit

A. Illinois

1. *Viramontes v. County of Cook*, 1:21-cv-04595 (N.D. Ill.) (Second Amendment challenge to Cook County ordinance restricting assault weapons)
 - a. Defendants' motion for summary judgment filed on March 3, 2023. Plaintiffs' response due April 24, 2023. Defendants' reply due May 8, 2023.
 - b. Plaintiffs' motion for summary judgment due May 1, 2023. Defendants' response due June 1, 2023. Plaintiffs' reply due June 15, 2023.
2. *National Ass'n for Gun Rights v. City of Highland Park, Ill.*, 1:22-cv-04774 (N.D. Ill.) (Second Amendment challenge to City of Highland Park ordinance restricting assault weapons and large-capacity magazines)

- a. Plaintiffs' motion for preliminary injunction fully briefed and awaiting decision or further action from the court.
3. *Bevis v. City of Naperville, Ill.*, 1:22-cv-04775 (N.D. Ill.) (Second Amendment challenge to (a) Illinois law restricting assault weapons and large-capacity magazines of over 10 rounds for long guns and over 15 rounds for handguns and (b) City of Naperville ordinance restricting sale of assault weapons)
 - a. District court denied plaintiffs' motions for temporary restraining order and preliminary injunction motion on February 17, 2023. 2023 WL 2077392. Plaintiffs appealed to the Seventh Circuit.
 - b. District court denied plaintiffs' motion for a preliminary injunction pending appeal on March 2, 2023.
4. *Bevis v. City of Naperville, Ill.*, 23-1353 (7th Cir.) (plaintiffs' appeal from denial of motions for temporary restraining order and preliminary injunction in 1:22-cv-04775 (N.D. Ill.))
 - a. Appeal docketed February 23, 2023.
 - b. Plaintiffs-appellants' motion for injunction pending appeal fully briefed and awaiting decision.
 - c. Plaintiffs-appellants' opening brief submitted April 3, 2023. Defendants-appellees' and intervenors-appellees' briefs currently due May 3, 2023. Plaintiffs-appellants' reply brief currently due May 24, 2023.
5. *Herrera v. Raoul*, 1:23-cv-00532 (N.D. Ill.) (Second Amendment challenge to Illinois law restricting assault weapons and large-capacity magazines of over 10 rounds for long guns and over 15 rounds for handguns)
 - a. Plaintiff's motion for temporary restraining order and preliminary injunction pending. Oral argument to be held April 17, 2023.
6. *Barnett v. Raoul*, 3:23-cv-00209 (S.D. Ill.) (consolidated) (Second Amendment challenge to Illinois law restricting assault

weapons and large-capacity magazines of over 10 rounds for long guns and over 15 rounds for handguns)

- a. Consolidated with *Harrel v. Raoul*, 3:23-cv-00141, *Langley v. Kelly*, 3:23-cv-00192, and *Federal Firearms Licensees of Illinois v. Pritzker*, 3:23-cv-00215.
 - b. Plaintiffs' motions for preliminary injunction pending. Oral argument held April 12, 2023.
7. *Kenneally v. Raoul*, 3:23-cv-50039 (N.D. Ill.) (Second Amendment and Illinois state constitutional challenge to Illinois law restricting assault weapons and large-capacity magazines of over 10 rounds for long guns and over 15 rounds for handguns)
- a. Plaintiffs' preliminary injunction motion filed February 14, 2023. Defendants' response filed March 24, 2023.
 - b. Defendants' submission regarding federal jurisdiction/standing and remand to state court filed March 30, 2023. Plaintiffs' response due May 1, 2023. Defendants' reply due May 16, 2023.

VII. Tenth Circuit

A. Colorado

1. *Gates v. Polis*, 1:22-cv-01866 (D. Colo.) (Second Amendment challenge to Colorado's law restricting large-capacity magazines of over 15 rounds of ammunition)
 - a. Plaintiffs filed motion for temporary restraining order and preliminary injunction on August 2, 2022.
 - i. Plaintiffs withdrew TRO motion on September 2, 2022 (so ordered on September 6, 2022).
 - ii. Defendant filed response to preliminary injunction motion on October 13, 2022.

- iii. Plaintiffs withdrew preliminary injunction motion on October 20, 2022 (so ordered on October 20, 2022).
 - b. Discovery ongoing with current cut-off date of June 30, 2023.
 - c. Dispositive motions due July 31, 2023. Final pre-trial conference scheduled for November 13, 2023.
2. *Rocky Mountain Gun Owners v. Town of Superior*, 1:22-cv-02680 (D. Colo.) (Second Amendment challenge to laws restricting assault weapons and large-capacity magazines passed by four Colorado localities (Town of Superior, City of Boulder, City of Louisville, and Boulder County)¹)
- a. Plaintiffs filed motion for preliminary injunction on October 18, 2022.
 - i. Plaintiffs withdrew preliminary injunction motion on October 27, 2022 (so ordered on October 28, 2022).
 - ii. Parties filed joint stipulation to stay enforcement of Defendants’ assault weapon and large-capacity ordinances “until the Court rules on the Plaintiffs’ request for any injunction or declaratory judgment, or when this Court enters final judgment,

¹ In two prior post-*Bruen* actions against the Town of Superior and against Boulder County, the district court, without a hearing or any submission or argument from defendants, entered uncontested temporary restraining orders on Second Amendment grounds against Superior’s and Boulder County’s ordinances restricting assault weapons and large-capacity magazines. *See Rocky Mtn. Gun Owners v. Town of Superior*, No. 1:22-cv-01685, ECF 18 (D. Colo. July 22, 2022); *Rocky Mtn. Gun Owners v. Bd. of Cnty. Comm’rs of Boulder Cnty.*, No. 1:22-cv-02113, ECF 15 (D. Colo. Aug. 30, 2022). Plaintiffs later voluntarily dismissed these actions, and the TROs in each were thereby dissolved. No. 1:22-cv-01685, ECF 52-53 (D. Colo. Oct. 12, 2022) (Superior); No. 1:22-cv-02113, ECF 30 (D. Colo. Oct. 12, 2022) (Boulder County).

whichever comes earlier” on October 27, 2022 (so ordered November 3, 2022).

- b. Discovery ongoing with current cut-off date of July 28, 2023.
- c. Dispositive motions due September 15, 2023. Final pre-trial conference scheduled for January 16, 2024.

VIII. D.C. Circuit

- 1. *Hanson v. District of Columbia*, 1:22-cv-02256 (D.D.C.)
(Second Amendment and due process challenge to D.C.’s law restricting large-capacity magazines of over 10 rounds of ammunition)
 - a. Plaintiffs’ preliminary injunction motion pending. Oral argument held April 13, 2023.

DATED: Honolulu, Hawai‘i, April 14, 2023

/s/ Kaliko ‘onālani D. Fernandes

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